

CR-15-00924-PHX-GMS (DKD), July 31, 2015

1 **UNITED STATES DISTRICT COURT**2 **FOR THE DISTRICT OF ARIZONA**

3 **United States of America,**)
4)
5 Plaintiff,) CR-15-00924-PHX-GMS (DKD)
6 vs.) July 31, 2015
7) Phoenix, Arizona
8 **Erik Stephen Foster,**) 4:00 p.m.
9 Defendant.)
10 _____
11

12 **BEFORE: THE HONORABLE EILEEN S. WILLETT, MAGISTRATE JUDGE**

13 **TRANSCRIPT OF PROCEEDINGS**

14 **DETENTION HEARING (Continued)**

15 **A P P E A R A N C E S**

16 For the Government:

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18 For the Defendant:

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22 Proceedings Recorded by Electronic Sound Recording
23 Transcript Produced by Transcriptionist

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PROCEDINGS

(Court was called to order by the courtroom deputy.)

(Proceedings begin at 4:00 p.m.)

THE COURT: Good afternoon. Please be seated.

Counsel, you need to go back to counsel table because I need more information for this hearing.

COURTROOM DEPUTY: On the record in 15-CR-924, USA v.

Erik Foster, before the Court for a continued detention hearing.

Counsel, please state your appearances.

MR. KIRBY: Vincent Kirby for the United States.

MR. TATE: Good morning, Your Honor. Loyd Tate on behalf Mr. Foster, who is to my immediate right.

THE COURT: Thank you. Please be seated.

Mr. Foster, please be seated.

I reviewed carefully the indictment. I reviewed the complaint and statement of probable cause and there have now been two hearings with regard to co-defendants. But I did have several questions with regard to Mr. Foster after I reviewed those documents that I just stated on the record.

And I know that Pretrial had been doing an additional check with regard to the feasibility of electronic monitoring. I need to read this as well. I need to read this as well and I just got it. But I have some questions for the Government and the Government may have already stated this but I don't have it

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1 in my notes and so I need to ask it again and also Mr. Tate.
2 All right?

3 Is this a presumption case?

4 MR. KIRBY: Your Honor, I have to be honest with the
5 Court. I'm here for Lisa Jennis and I do not have a copy of
6 the complaint, nor have I seen the affidavit. She had given me
7 some directions in conjunction with the recommendations of
8 pretrial and that's how I appeared.

9 THE COURT: Would you print it for him?

10 I need to know the minimum mandatory sentence on
11 Count 1. I believe it is a presumption case but I want to
12 confirm that with both counsel and I need to know what the
13 minimum mandatory and the max is and Mr. Foster was indicted on
14 only one count.

15 And then I need to know what, in fact, was observed
16 by law enforcement with regard to the alleged role of this
17 particular defendant.

18 MR. KIRBY: Your Honor, to those questions, I'm going
19 to have to ask to have this reset.

20 THE COURT: Okay. I'm going to give all of you all
21 of these questions so that all of can you work on all of these
22 questions, okay?

23 I want to know his alleged role. What was actually
24 observed by law enforcement?

25 I have reviewed exhibits in Mr. Deatherage's case

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1 that Mr. Foster appears in and that is a Facebook page it
2 appears and it appears as though Mr. Foster is responding with
3 a like to two comments that are on a Facebook page. One of the
4 comments is, and I would quote: We all fucking nuts but we're
5 family and that means I would hide a body for you. There's a
6 like from an Erik Foster on that and then there is a like to
7 the statement -- and I would add that there is a picture with
8 that quote and it appears to be a picture of perhaps characters
9 in a movie or there's a picture that is attached to that quote.
10 And they are holding their -- they are armed.

11 But it is not evidence in this particular hearing.

12 MR. TATE: I'm just asking, and forgive me, Judge.
13 I'm just asking. Can I get the quote again? I'm just asking
14 for it.

15 THE COURT: Yes. The quote is: We all fucking nuts
16 but we're family and that means I'd hide a body for you. And
17 those are quotes. This appears on an exhibit to the
18 co-defendant's detention hearing. It has a picture attached to
19 it. It appears to be a Facebook or social media page and it
20 is -- there is a posted, quote/unquote, like with the name Erik
21 Foster.

22 And then there's another quote with a like from an
23 Erik Foster posted. And that statement is, and it's a longer
24 one and it's, quote: How far are you willing to go to protect
25 yourself and your family's liberties and personal freedom? We

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1 are not going to lose our country without a serious fight,
2 exclamation point, close quote. Again, that is not a statement
3 by Erik Foster. That is a statement to which he posted a like.

4 So consequently, my question is: Does Erik Foster
5 have any known ties to the organization to which the
6 co-defendants indicated an affiliation which is -- which was
7 described as a militia group, and I believe the name of that --
8 and I would have to pull that up from the other two transcripts
9 but I believe the name of that was Arizona Special Operations.
10 I believe it was Arizona Special Operations. So my questions
11 for both of you that I need the answers to would be: Is this a
12 presumption case? What is the minimum mandatory and the
13 maximum on the charges? What is this co-defendant's alleged
14 role and what was actually observed? Does he have any known
15 ties to the militia group that has been previously mentioned
16 from other co-defendants and was that him on the likes that I
17 just stated?

18 And I am more than happy to give both of you the
19 opportunity to address my concerns. I have a concern. I will
20 tell you what concerns I see with regard to this defendant. My
21 concerns for him are that he -- the nature and circumstances of
22 this offense involve controlled substances. I believe I have
23 heard from prior statements from the Government that he
24 allegedly drove a get-away car at high speeds. I believe I
25 heard that he was allegedly armed but I want to know what was

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1 actually seen because he's not charged with that. I have seen
2 in the pretrial sentence report that he has used two aliases,
3 that he's unemployed. He does have ties in Arizona for nine
4 years. His mother has been found suitable as a third-party
5 custodian. I have not read the most recent. It is my
6 understanding that there are some issues with stability of the
7 residence.

8 He was honorably discharged from the army after
9 service to our country from '98 to 2003. As a result of his
10 service, he did travel internationally. He's been diagnosed
11 with anxiety and PTSD. He has a history of substance abuse.
12 He was positive when he was brought in for marijuana. He does
13 have a history of suicidal ideation. He has no criminal
14 history. That is what I've gleaned from what I have but my
15 concerns are what I stated initially. I did ask that this home
16 be looked at in terms of perhaps electronic monitoring but I do
17 need the answers to those other questions, and I am more than
18 happy to place them immediately on the record as soon as you
19 guys can get the information.

20 Would you like to be heard, Mr. Tate?

21 MR. TATE: Yes, Judge, and again, I am at a -- in all
22 candor to the Court, do I believe it's a presumption case?
23 Yes, Judge, I do believe it's a presumption case for what the
24 Government is alleging the amount of cocaine mixture and
25 cocaine base. In all of my experience, would I right now want

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1 to go back and just refresh but in my experience, it would be a
2 presumption case.

3 I am at a real disadvantage as to some of this
4 because the Government has had a chance to go through some
5 discovery and I have had a chance to go through minimal, but
6 the Government has alerted me -- I had a family emergency I had
7 to deal with as soon as I left here. But the Government has
8 alerted me that I'm going to pick up 35 or 36 discs from them.
9 And so that's why, one, while you were quoting I'm furiously
10 trying to write down but I have no idea, Judge, right now where
11 to go and go, "Okay. Yeah, I know where that's at," and I can
12 go to look and see that.

13 So that's the only thing I want to voice at the Court
14 is it would take me some time, and I probably would be relying
15 on Mr. Jennis to direct my attention, help me out, because I
16 just don't know where a lot of this stuff that the Court was
17 going to -- I don't know where it is.

18 THE COURT: I can certainly appreciate that,
19 Mr. Tate, and I know that I realize that you may need then
20 time. I can certainly appreciate that. And the Government has
21 indicated that it needs time as well.

22 MR. KIRBY: Yes, Your Honor. As I indicated,
23 Ms. Jennis is not here. She obviously will have a whole lot
24 more information and certainly can help Mr. Tate in that regard
25 since I assume she's been attached to at least the other

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1 hearings that the Court has referred to. So I would ask for a
2 date next week. Is the Court going to -- is the Court going to
3 keep --

4 THE COURT: I would. Since I have heard part of this
5 hearing, it makes sense for me to keep the rest of it. I would
6 continue it onto my calendar on Tuesday, August 4, at 1:30. I
7 can hear it as soon as Tuesday.

8 Do you need to call your offices for the scheduling?
9 You can do so.

10 MR. TATE: I don't, Judge. The only thing I have is
11 the Ruiz-Hernandez change of plea in your Court at 2 o'clock.

12 THE COURT: Oh. Then you'll be fine. You can't
13 start without me and you'll know that I will be here.

14 MR. TATE: Judge, can I have one moment?

15 THE COURT: Absolutely.

16 (Defendant confers with counsel.)

17 MR. TATE: Yes, Judge. That Tuesday would be fine.

18 THE COURT: And will the Government be available at
19 that time?

20 MR. KIRBY: As far as I know, Your Honor.

21 THE COURT: All right. Then I'll continue this
22 matter for further hearing for the information that the Court
23 requests. In addition, the Court has the information from
24 Pretrial Services.

25 Would you like to add anything?

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1 PRETRIAL OFFICER: No. Your Honor. Nothing further.

2 THE COURT: And did anyone have any questions with
3 regard to Pretrial Services before I let them go?

4 MR. KIRBY: No, Your Honor.

5 MR. TATE: No, Your Honor.

6 THE COURT: All right. Thank you.

7 Thank you very much.

8 (Proceedings concluded at 4:15 p.m.)

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4 C E R T I F I C A T E
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6 I, ELAINE M. CROPPER, court-approved transcriber,
7 certify that the foregoing is a correct transcript, to the
8 best of my skill and ability, from the official electronic
9 sound recording of the proceedings in the above-entitled
10 matter.

11
12 DATED at Phoenix, Arizona, this 19th day of January,
13 2017.

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16
17 s/Elaine M. Cropper
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19 Elaine M. Cropper
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